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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/763,086 | 01/22/2004 | Arnd Kessler | H 5358 PCT/US | 6406 |

423 7590 06/15/2005

HENKEL CORPORATION
THE TRIAD, SUITE 200
2200 RENAISSANCE BLVD.
GULPH MILLS, PA 19406

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| EXAMINER |
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MRUK, BRIAN P

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| ART UNIT | PAPER NUMBER |
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1751

DATE MAILED: 06/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/763,086

Applicant(s)

KESSLER ET AL.

Examiner

Brian P. Mruk

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 March 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 and 13-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 and 13-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 3-23-05.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

1. This Office action is in response to Applicant's amendment filed March 23, 2005. Applicant has amended claims 1, 13, and 17. Claim 12 has been cancelled. Currently, claims 1-11 and 13-27 remain pending in the application.
2. The text of those sections of Title 35 U.S. Code not included in this action can be found in the prior Office action, Paper No. 20041019.
3. The rejection of claims 1-11 and 19-27 under 35 U.S.C. 102(b) as being anticipated by Scheper et al, U.S. Patent No. 6,013,613, is withdrawn in view of applicant's amendments and remarks.
4. The rejection of claims 1-11 and 19-27 under 35 U.S.C. 102(b) as being anticipated by Gorlin et al, U.S. Patent No. 5,698,507, is withdrawn in view of applicant's amendments and remarks.
5. The rejection of claims 1-11, 19-21 and 25-27 under 35 U.S.C. 102(e) as being anticipated by Kawaguchi et al, U.S. Patent No. 6,680,286, is withdrawn in view of applicant's amendments and remarks.

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6. The rejection of claims 12-18 under 35 U.S.C. 103(a) as being unpatentable over Kawaguchi et al, U.S. Patent No. 6,680,286, is withdrawn in view of applicant's amendments and remarks.

7. The provisional rejection of claims 1-11 and 13-27 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-28 of copending Application No. 10/764,232 is maintained for the reasons of record.

8. The provisional rejection of claims 1-11 and 13-27 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-24 of copending Application No. 10/763,776 is maintained for the reasons of record.

Response to Arguments

9. Applicant's arguments filed March 23, 2005 have been fully considered but they are not persuasive.

Applicant argues that copending Application Nos. 10/764,232 and 10/763,776 do not disclose or suggest the claimed diffusion coefficient limitation required in the instant claims. However, the examiner asserts that the nonionic surfactants disclosed in both copending Application Nos. 10/764,232 and 10/763,776 would inherently meet the diffusion coefficient requirement. Specifically, both copending Application Nos. 10/764,232 and 10/763,776 require the exact same nonionic surfactant required in the instant claims, and therefore, the examiner asserts that this diffusion coefficient property

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would inherently be met by the nonionic surfactants claimed in both copending Application Nos. 10/764,232 and 10/763,776.

Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Mruk whose telephone number is (571) 272-1321. The examiner can normally be reached on Monday-Thursday from 7:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta, can be reached on (571) 272-1316. The fax phone

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number for the organization where this application or proceeding is assigned is (703)

872-9306.

BPM

Brian Mruk

June 10, 2005

Brian P. Mruk

Brian P. Mruk
Primary Examiner
Tech Center 1700